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RANGERS, INC.  
19

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
22

23 CORY SPENCER, an individual;  
24 DIANA MILENA REED, an  
individual; and COASTAL  
25 PROTECTION RANGERS, INC., a  
26 California non-profit public benefit  
corporation,

27 Plaintiffs,  
28

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' RESPONSES TO CITY  
OF PALOS VERDES ESTATES,  
CHIEF OF POLICE JEFF KEPLEY,  
BRANT BLAKEMAN, AND SANG  
LEE'S OBJECTIONS TO EVIDENCE**

Date: February 21, 2017  
Time: 10:00 a.m.  
Judge: Honorable S. James Otero

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v.

LUNADA BAY BOYS; THE  
INDIVIDUAL MEMBERS OF THE  
LUNADA BAY BOYS, including but  
not limited to SANG LEE, BRANT  
BLAKEMAN, ALAN JOHNSTON  
AKA JALIAN JOHNSTON,  
MICHAEL RAE PAPAYANS,  
ANGELO FERRARA, FRANK  
FERRARA, CHARLIE FERRARA,  
and N. F.; CITY OF PALOS VERDES  
ESTATES; CHIEF OF POLICE JEFF  
KEPLEY, in his representative  
capacity; and DOES 1-10,

Defendants.

Ctrm.: 10C  
1st Street Courthouse

Complaint Filed: March 29, 2016  
Trial Date: November 7, 2017

1 Plaintiffs respond to the Objections to Evidence filed in support of Plaintiffs'  
 2 Motion for Class Certification made by Defendants City of Palos Verdes Estates,  
 3 Chief of Police Jeff Kepley, Brant Blakeman and Sang Lee (“Objecting  
 4 Defendants”) as follows:

5 **I. DEFENDANTS' OBJECTIONS ARE MISPLACED**

6 Objecting Defendants assert more than 270 pages of objections to Plaintiffs'  
 7 evidence.<sup>1</sup> The Court should not be expected to rule on each of these objections  
 8 because, unlike evidence in support of a motion for summary judgment, evidence  
 9 presented in support of class certification need not be admissible at trial. *Alonzo v.*  
 10 *Maximus, Inc.*, 275 F.R.D. 513, 519 (C.D. Cal. 2011). Indeed, “[t]he court need not  
 11 address the ultimate admissibility of the parties' proffered exhibits, documents and  
 12 testimony at this stage, and may consider them where necessary for resolution of the  
 13 [Motion for Class Certification].” *Id.* (internal citations omitted); *In re NJOY, Inc.*  
 14 *Consumer Class Action Litig.*, 120 F. Supp. 3d 1050, 1083 (C.D. Cal. 2015)  
 15 (overruling evidentiary objections because the court “need not adhere strictly to the  
 16 Federal Rules of Evidence in deciding whether to certify a class”).<sup>2</sup>

17 Defendants' objections – which blanket nearly every declaration – are  
 18 irrelevant, boilerplate objections, many of which contain no analysis. *See, e.g.*,  
 19 City's Evidentiary Objections, Dkt. No. 3593 at 58 (“Hearsay. FRE 801, 802, 803.”)

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21 <sup>1</sup> Plaintiffs are available to submit specific responses to any objection in more detail  
 22 if the Court would find it helpful.

23 <sup>2</sup> Defendant Blakeman cites two cases for the proposition that declarations must  
 24 meet admissibility standards. (Dkt. No. 196 at 2:20-24.) In the first, *Krzesniak v.*  
 25 *Cendant Corp.*, No. C 05-05156 MEJ, 2007 WL 1795703 (N.D. Cal. June 20,  
 26 2007), the court allowed consideration of the declarations at issue for a limited  
 27 purpose. The judgment in the second case, *Wang v. Chinese Daily News, Inc.*, 236  
 28 F.R.D. 485 (C.D. Cal. 2006), was vacated. *Chinese Daily News, Inc. v. Wang*, 132  
 S. Ct. 74 (2011).

1 This statement is offered to prove the truth of the matter asserted and constitutes  
 2 inadmissible hearsay for which no exception is available."). "The summary, vague  
 3 nature of these objections is grounds alone for the court to deny them." *Californians*  
 4 *for Disability Rights, Inc. v. California Dept. of Transp.*, 249 F.R.D. 334, 349-350  
 5 (N.D. Cal. 2008). Further, "[i]t is not the Court's responsibility to attempt to discern  
 6 the City's grounds for objecting to evidence submitted by Plaintiffs where the City  
 7 merely repeats the same categorical objections but provides little to no explanation  
 8 as to why the subject evidence is objectionable." *Communities Actively Living*  
 9 *Independent and Free v. City of Los Angeles*, 2011 WL 4595993, \*8 (C.D. Cal. Feb.  
 10 10, 2011.)

11 Accordingly, the Court need not rule on Objecting Defendants' specific  
 12 evidentiary objections. To the extent the Court is nevertheless inclined to do so,  
 13 Plaintiffs provide generalized responses below.

## 14 II. EXPERT WITNESS DECLARATIONS

### 15 A. Declaration Of Philip King

16 The City of Palos Verdes Estates and Chief of Police Jeff Kepley  
 17 (collectively, the "City") object to Dr. King's credentials and argue that he is not  
 18 qualified as an expert on the economic value of beach recreation. Dr. King's  
 19 declaration states that he has specifically studied the economic value of California  
 20 beaches for more than 20 years and that he has presented evidence to the California  
 21 Coastal Commission pertaining to the economic recreation value of beaches. (King  
 22 Decl., ¶ 4.) Dr. King developed his expertise through census data, information  
 23 provided by the California Coastal Commission, information available to him from  
 24 more than 20 years of studying California beaches, reports and news articles about  
 25 Lunada Bay and its localism problem, other expert reports, and firsthand experience  
 26 visiting the bluffs of the Palos Verdes Peninsula. (*Id.*, ¶¶ 6, 9, 11-13.)

27 Dr. King's economic valuation methods are well established and accepted. In  
 28 *Ocean Harbor House Homeowners Ass'n v. California Coastal Com'n*, 163 Cal.



1 App. 4th 215, 234 (2008), the California Court of Appeal analyzed various methods  
2 used to calculate a mitigation fee related to the loss of recreational use of a beach in  
3 Monterey County. In so doing, the court cited two articles by Dr. King about the  
4 economic impact of a beach in its analysis. *Id.*, citing Philip King and Michael  
5 Potepan, *The Economic Value of California's Beaches*, Public Research Institute  
6 Report Commissioned by the California Department of Boating and Waterways,  
7 May 1997; Philip King, *The Fiscal Impact of Beaches in California*, Public  
8 Research Institute Report Commissioned by the California Department of Boating  
9 and Waterways, September 1999. Dr. King was qualified to present evidence to the  
10 California Coastal Commission pertaining to the economic recreation value of  
11 beaches, a California court has relied on his expertise, and he is likewise qualified  
12 here.

13 Defendants City and Blakeman also object to certain statements in Dr. King's  
14 declaration on the grounds that they are speculative and lack foundation. However,  
15 Dr. King has expressly stated the sources upon which he derives his expertise,  
16 including those described above. At issue in particular is Dr. King's method of  
17 deriving the estimated recreational value lost as a result of localism at Lunada Bay  
18 since 1970. Dr. King states that in coming to this opinion, he relied on the "benefits  
19 transfer" method, an accepted method used by economists and public agencies to  
20 value recreational beach resources; determined Lunada Bay is a world-class surfing  
21 destination because of its unique geographical features; determined the number of  
22 annual visits to other world-class surfing destinations; and took into account the  
23 number of residents and the number of surfers in California. Dr. King has therefore  
24 stated specific facts that formed the basis his opinion, and Plaintiffs fail to see how  
25 Dr. King's opinion on the lost recreational value of Lunada Bay is speculative or  
26 lacks foundation.

27 Both the City and Blakeman also challenge Dr. King's analysis under  
28 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), arguing that a

1 thorough analysis of expert testimony under the *Daubert* standard is appropriate at  
2 class certification. (Blakeman Obj. to Evid., Dkt. No. 196 at 6:21-7:17; City Obj. to  
3 Evid., Dkt. No. 188 at 117.) But both the City and Blakeman fail to note that, while  
4 *Daubert* sets forth the correct evidentiary standard for admission of expert  
5 testimony, "at the class certification stage, district courts are not required to conduct  
6 a full *Daubert* analysis. Rather, district courts must conduct an analysis tailored to  
7 whether an expert's opinion was sufficiently reliable to admit for the purpose of  
8 proving or disproving Rule 23 criteria, such as commonality and predominance."  
9 *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 495 (C.D. Cal. Dec. 20,  
10 2012). Indeed, at the class certification stage "it is not necessary that expert  
11 testimony resolve factual disputes going to the merits of plaintiff's claims; instead,  
12 the testimony must be relevant in assessing 'whether there was a common pattern  
13 and practice that could affect the class as a whole.'" *Ellis v. Costco Wholesale Corp.*,  
14 657 F.3d 970, 983 (9th Cir. 2011).

15 Dr. King's declaration utilizes an economic recreation valuation model that is  
16 widely accepted. *See, e.g., Ocean Harbor House Homeowners Ass'n*, 163 Cal. App.  
17 4th at 234. Dr. King further explains his opinion with respect to exclusion of  
18 outsiders at Lunada Bay, and in so doing, supports Plaintiffs' claims of commonality  
19 and predominance. (Decl. King, ¶ 17.) In this sense, his declaration may be  
20 considered sufficiently reliable and relevant to establishing a common pattern and  
21 practice that has affected the entire Plaintiff class. *See Ellis*, 657 F.3d at 983. The  
22 City's and Blakeman's challenges, which pertain mostly to the merits of Plaintiffs'  
23 claims and the "scientific rigor" of Dr. King's analysis, are premature and belie the  
24 evidence presented by Dr. King. *Ellis*, 657 F.3d at 983. Nor do the City or  
25 Blakeman present any evidence to contradict Dr. King's analysis. Thus, their  
26 objections must be disregarded.

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1 **B. Declaration Of Peter Neushul<sup>3</sup>**

2 The City likewise objects to Dr. Neushul's credentials and argues that he is  
3 not qualified as an expert on subjects of surf history and surf culture. Dr. Neushul's  
4 declaration states that he taught a course at the University of Santa Barbara entitled  
5 "History of Surfing" from 2008 to 2012. P. Neushul Decl., ¶ 1. He co-wrote a book  
6 on the history of surfing entitled "The World in the Curl: An Unconventional  
7 History of Surfing," and he has published several articles on the history of surfing.  
8 *Id.* Dr. Neushul is therefore qualified to opine on matters of surf history and surf  
9 culture.

10 The City also argues that certain statements in Dr. Neushul's declarations are  
11 speculative and lack foundation. In fact, many of these disputed statements appear  
12 in Dr. Neushul's book, "The World in the Curl: An Unconventional History of  
13 Surfing," which includes 317 endnotes and 18 pages of a selected bibliography. Dr.  
14 Neushul may rely on secondhand sources to form his opinion, and he is not required  
15 to provide each one of these sources here. *See* Fed. R. Evid. 703, Adv. Comm.  
16 Notes.

17 **III. PERCIPIENT WITNESS DECLARATIONS**

18 **A. Hearsay**

19 Defendants City and Blakeman object to a number of the percipient witness  
20 declarations on the basis of hearsay. They argue that the statements at issue are  
21 being proffered for the truth of the matter asserted and are therefore inadmissible  
22 under FRE 801-803. *See, e.g.,* City's Objections to the Declarations of John  
23 Carpenter, Michael Sisson, John MacHarg, Blake Will, Mark Slatten, Stephen  
24 Young, Ricardo Pastor, Sef Krell, Jason Gersch, Jordan Wright, Chris Claypool,  
25

26 \_\_\_\_\_  
27 <sup>3</sup> Defendant Blakeman requested the Court strike Dr. Neushul's declaration but  
28 provides no reasoning as to why. Blakeman's Objections, 2:25-28.



1 James Conn, Joseph Lanning, John Geoffrey Hagins, Michael Alexander Gero,  
2 Kenneth Claypool, Diana Milena Reed, and Cory Spencer. However, the statements  
3 in dispute are not being offered for the truth of the matter asserted and/or do not  
4 otherwise constitute hearsay.

5 For example, Plaintiff Diana Milena Reed declared that a Palos Verdes  
6 Estates policeman told her she could make a citizen's arrest but that if she did, she  
7 would be at risk of being sued by someone from the Lunada Bay area. (Reed Decl.,  
8 ¶ 14.) Although the City objected to this statement as inadmissible hearsay, the  
9 statement isn't being offered for the truth of the matter asserted—that if Ms. Reed  
10 made a citizen's arrest, she would be at risk of being sued—but rather its effect on  
11 the hearer. In this case, the evidence is being used to show why Ms. Reed believed  
12 the police did not act on behalf of her safety. Likewise, the statements of declarants  
13 who stated that they had heard localism was particularly bad at Lunada Bay or that  
14 the Bay Boys were aggressive in their methods of excluding outsiders were also  
15 used to show the effect on the hearer. *See, e.g.*, Blakeman's Objections to the  
16 Declarations of Spencer, Reed, Wright, Christopher Taloa, MacHarg, Carpenter,  
17 Gersch, Will, Perez, K. Claypool, Bruce Bacon, Sisson, Gero, Amin Akhavan,  
18 Conn, and Daniel Jongeward. The effect, generally, was to show why declarants  
19 were apprehensive about visiting Lunada Bay, why they took certain precautions if  
20 they did go there, or why they didn't trust the police to help them if they got into  
21 trouble there.

22 Moreover, many of the statements objected to as hearsay were spoken by a  
23 party opponent and therefore do not constitute hearsay. FRE 801(d)(2); *see, e.g.*,  
24 City's Objections to the Declarations of Will, Innis, Young, Pastor, Krell, Gersch,  
25 Wright, Conn, Hagins, Reed, and Spencer.

26 **B. Lack Of Foundation And Personal Knowledge**

27 Defendants City and Blakeman also object to a number of the percipient  
28 witness declarations on the basis of lack of foundation and lack of personal



1 knowledge in relation to Federal Rule of Evidence 602. In many instances, they  
2 object to the same statement on the grounds of both hearsay and a lack of personal  
3 knowledge. *See, e.g.*, City's Objections to the Declarations of Carpenter, Sisson,  
4 Will, Slatten, Innis, Young, Krell, Gersch, Wright, C. Claypool, Conn, Lanning,  
5 Hagins, Gero, and Reed. However, where the declarant made or personally heard  
6 the out-of-court statement himself, he indeed has personal knowledge that such  
7 statement was made. The correct objection would be hearsay if such statement was  
8 being offered for the truth of the matter asserted, yet these objections should also be  
9 overruled. *See* Section III.A, *supra*.

10 Defendant Lee objects on the basis of lack of foundation to declarants Cory  
11 Spencer, John MacHarg, and Christopher Taloa's identity of Mr. Lee on separate  
12 occasions. Each of these declarants described how he came to know who Mr. Lee  
13 was. *See, e.g.*, MacHarg Decl., ¶¶ 2-3 (declarant was born and raised in Palos  
14 Verdes Estates and surfed Lunada Bay regularly).

### 15 **C. Relevance**

16 The City objects to several percipient witness declarations on the grounds that  
17 the events declared to are irrelevant because they took place more than two years  
18 ago and the statute of limitations for personal injury suits is two years. *See* City's  
19 Objections to the Declarations of Will, Innis, Pastor, Bacon, Gersch, Conn, Hagins,  
20 and Gero. These individuals' descriptions of injuries caused by the Bay Boys more  
21 than two years ago are relevant to show the long history of exclusionary activities by  
22 the Bay Boys and the City's long-standing policy, custom, or practice of tacitly  
23 approving the exclusion of non-residents.

24 The City further objects to several declarations on the basis that the  
25 declarants' wishes to have the City support public access to Lunada Bay through  
26 concrete actions are not relevant to the allegations against the City. *See* City's  
27 Objections to the Declarations of Sisson, MacHarg, Slatten, Young, Gersch, Conn,  
28 Lanning, Hagins, Gero, K. Claypool, and Reed. In fact, such statements are highly

1 relevant because Plaintiffs have explicitly alleged the City has permitted or  
2 facilitated the exclusion of certain beachgoers, including non-residents, at Lunada  
3 Bay. Such statements are also relevant to establishing commonality and typicality  
4 under Federal Rule of Civil Procedure 23(a). The City's relevance objections on this  
5 basis are also somewhat disingenuous in light of its argument in opposition to class  
6 certification that "Plaintiffs have provided the Court with no explanation of the type  
7 of injunctive or declaratory relief they intend to seek against the PVE Defendants."  
8 (City Opp'n, Dkt. No. 187, at 13:21-22.)

9 **D. Other Objections To Percipient Witness Declarations**

10 The City objects that declarants Christopher Taloa and Joseph Lanning are  
11 not class members. First, neither must be a class member in order to submit a  
12 percipient witness declaration in support of Plaintiffs' motion for class certification.  
13 Second, Mr. Taloa is not excluded from the class solely because the City has  
14 allegedly been helpful to him in the past, nor is that grounds for denying  
15 certification. *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2009) ("[t]he fact  
16 that some class members may have suffered no injury or different injuries . . . does  
17 not prevent the class from meeting the requirements of Rule 23(b)(2)"); *In re NJOY,*  
18 *Inc. Consumer Class Action Litig.*, 120 F. Supp. 3d 1050, 1094 (C.D. Cal. 2015)  
19 ("inclusion of uninjured class members does not necessarily render a class  
20 unascertainable"). He still wants lawful, safe, and secure access to Lunada Bay to  
21 recreate. Likewise, Mr. Lanning does not have to have visited Lunada Bay in the  
22 past to be a class member now.

23 Defendant Blakeman objects that percipient witnesses opined on subjects  
24 requiring expert testimony. However, the subjects on which these witnesses opined  
25 do not require expert testimony. *See, e.g.,* Spencer Decl., ¶ 17 (declaring that he  
26 asked for extra police patrols and there were none visible, particularly in the water);  
27 Reed Decl., ¶ 14 (declaring that drinking beer on the beach is illegal); and Wright  
28 Decl., ¶ 8 (declaring that he believed two group of people who were saying the same

1 thing to him, where the first group was calling and texting someone, were  
2 coordinated).

#### 3 IV. ATTORNEY DECLARATIONS

4 Defendants City and Blakeman object to exhibits attached to the declarations  
5 of Plaintiffs' attorneys Victor Otten and Kurt Franklin on the grounds that the  
6 documents are not authenticated. The burden of proof for authenticating a  
7 document merely requires a "reasonable probability" that the evidence is what the  
8 proponent claims. *W. Emulsions, Inc. v. BASF Corp.*, No. CV05-5246CBMSSX,  
9 2007 WL 4405003, at \*1 (C.D. Cal. Jan. 25, 2007). The proponent need only show  
10 that the evidence is sufficient to allow a reasonable person to believe the evidence is  
11 what it purports to be. *Asociación De Periodistas De Puerto Rico v. Mueller*, 680  
12 F3d 70, 79-80 (1st Cir. 2012).

13 For example, authentication may be based on the appearance of the document  
14 itself. Fed. R. Evid. 901(b)(4); *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533-  
15 534 n.6 (9th Cir. 2011). Therefore, several exhibits attached to the Otten  
16 declaration, including the map of Palo Verdes Estates (Ex. 2), the video filmed by  
17 the Guardian newspaper (Ex. 12), the e-mails exchanged between Michael Thiel and  
18 Anton Dahlerbruch (Ex. 18), and the homepage for the Palos Verdes Homes  
19 Association (Ex. 22), are admissible because it is clear from the exhibit itself what  
20 the document actually is.

21 Next, a document may be authenticated by the very act of production.  
22 *Martinez v. England*, 221 F. App'x 575, 577 (9th Cir. 2007); *Maljack Prods., Inc. v.*  
23 *GoodTimes Home Video Corp.*, 81 F.3d 881, 889, n.12 (9th Cir. 1996). Therefore,  
24 the objections to Exhibits 3-7, 9-11, 13, 14, 17, 19, and 20 to the Otten declaration,  
25 which are all documents produced by Defendants, should be overruled.

26 Additionally, the authentication of Exhibit 21 to the Otten declaration (a letter  
27 received by Mr. Otten's client Christopher Taloa from an investigator hired by the  
28 defense in this matter) and Exhibits 1 and 2 to the Franklin declaration (research



1 documents Mr. Franklin's office acquired) are sufficiently supported by the  
2 respective declarants' personal knowledge, and these exhibits should be admitted as  
3 evidence.

4 **V. CONCLUSION**

5 For the foregoing reasons, Plaintiffs ask the Court to overrule Objecting  
6 Defendants' Objections to Evidence filed in support of Plaintiffs' Motion for Class  
7 Certification.

8 DATED: January 20, 2017

HANSON BRIDGETT LLP

9  
10  
11 By:           /s/ Kurt A. Franklin          

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